IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.493 of 2007
Date of decision: August 08, 2007.

Ishma

...**Petitioner(s)**

v.

State of Haryana

...**Respondent(s)**

CORAM:HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: Shri Sandeep Panwar, Advocate for the petitioner.

Shri Ravi Dutt Sharma, Deputy Advocate General, Haryana for the respondent.

ORDER

Surya Kant, J.

This revision petition is directed against the judgment and order dated 2/3 September, 2003 passed by the learned Judicial Magistrate First Class, Kaithal whereby the petitioner, along with his co-accused, was convicted under section 419, 420, 467, 468, 471, 120-B IPC and was sentenced to undergo maximum imprisonment of 3 years though he was sentenced separately for different offences, as well as against the judgment dated 16.1.2007 passed by the learned Additional Sessions Judge, Kaithal whereby the petitioner's appeal against the above stated judgment and order of the learned Judicial Magistrate, was partly allowed to the extent that the petitioner was acquitted of the charge under section 420, 471 IPC read with Section 120-B IPC and consequently, his sentence was also reduced to the

extent of 1-1/2 year. The fine imposed upon the petitioner under section 420 and 471 IPC, and if already paid, was also ordered to be refunded to him.

Still aggrieved, the petitioner has approached this Court.

Notice of motion was issued.

Learned Counsel for the parties have been heard and impugned orders have been perused.

The facts may be noticed briefly.

On 8th January, 1999, Prem son of Mam Chand, resident of village Geong, along with his two brothers, came to the police station, Sadar, Kaithal and got recorded the statement to the effect that on 7.1.1999, his brother Rohtash @ Pappu went to Ford Tractor Agency at Kaithal for some personal work and there, Kuldip Singh – Salesman told him that his brothers Prem and Sesha were going to purchase a Ford tractor for which purpose they have got sanctioned loan from the bank. The brother of the complainant, Rohtash came to the village and asked the complainant about purchasing of the tractor. When the complainant showed his ignorance and further told that there was no such plan, all the brothers got suspicious and went to the Ford Tractor Agency, Kaithal for inquiry. It was revealed to them that some mortgage deed in relation to the land measuring 73 kanal 15 marlas, which was in the name of the brother of the complainant, was got prepared thereby mortgaging the above stated land in favour of the State Bank of India, Keorak branch; two photographs were affixed on the mortgage deed, which were not of the brothers of the complainant. It was further found that one of the photograph was that of the petitioner. Upon further inquiry, the complainant and his brothers found that the second photograph was that of Chela Ram. One Rakma was witness to the said mortgage deed which was got executed after the photographs had been identified by one Ram Kumar, Lamberdar.

However, before the loan amount of Rs.2.95 lacs could be released and the tractor could be taken away fraudulently, the complainant and his brothers came to know of the fraud and got registered the subject FIR.

On a consideration of the oral as well as the documentary

evidence led by the prosecution, both the courts have concurrently held that the mortgage deed in dispute was got prepared in relation to the land of the complainant's brother though it was intended for getting loan sanctioned in favour of some other party. The photograph of the petitioner too has been duly proved on the mortgage deed (Ex.PG). The commission of the fraud and execution of the mortgage deed has been duly proved from the statements of Kuldip Singh – Salesman (PW1), Dalbir Singh, Patwari (PW6), U.K. Parbhakar, Branch Manager of the Bank (PW7), and Jaldhir Singh, Clerk, office of Sub-Registrar (PW9).

Though, Learned Counsel for the Petitioner has made an attempt to project as if the petitioner was totally innocent and not party to the fraudulent transaction, however, none of his contentions cut much ice. The original documents requisitioned from the office of Sub Registrar, as also from the Bank reveal that the petitioner was amongst the two persons who impersonated as brothers of the complainant.

Since the concurrent finding of fact is based upon upon appreciation of the oral as well as documentary evidence and no meaningful argument is advanced to suggest that any such conclusion is perverse or based upon misreading of the evidence, no interference in exercise of the revisional jurisdiction is called for. Consequently, I do not find any merit in this petition.

Faced with this situation, Learned Counsel for the Petitioner submits that though it stands proved that the mortgage deed in question was executed fraudulently, however, neither the loan amount was taken pursuant thereto nor ever utilized. In other words, the tractor was never delivered to the petitioner or his co-accused. Highlighting the fact that the petitioner is a pure and illiterate agriculturist, it is contended that since no financial loss to any agency has been caused, it is a fit case to reduce the quantum of sentence. It is also pointed out that the petitioner is the sole bread earner of the family and no other case of criminal nature is either pending or registered against the petitioner. The family circumstances and that he is the only source of livelihood for his dependent children, is also highlighted.

Having heard Learned Counsel for the parties on the quantum of sentence and keeping in view the fact that out of the total sentence of 1-

1/2 year, the petitioner has undergone actual sentence of 8 months, and upon consideration of the mitigating circumstances, noticed above, I am satisfied that the ends of justice would be appropriately met if the sentence awarded to the petitioner is reduced to the period already under gone by him.

I order accordingly.

The petitioner may be released forthwith if not required in any other case.

Disposed of.

August 08, 2007. [**Surya Kant**]
kadyan **Judge**